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7 UNITED STATE DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MIKE HAMILTON and HAMILTON
11 CORNER I, LLC,

12 Plaintiffs,

13 vs.

14 CITY OF NAPAVINE, a municipal
15 corporation,

16 Defendants.

NO. 18-cv-5412

ANSWER TO COMPLAINT ON TORT
AND OTHER CLAIMS AND
CONSTITUTIONAL VIOLATIONS

JURY DEMAND

17 Defendant City of Napavine, by and through its attorneys, for Answer and
18 Affirmative Defenses, admits, denies, and alleges as follows.

19 **Response to Plaintiff's Allegations**

20 1.1. Defendant is without sufficient knowledge to admit or deny paragraph 1.1,
21 and therefore denies it.

22 1.2. Defendant is without sufficient knowledge to admit or deny paragraph 1.2,
23 and therefore denies it.

1 1.3. Admitted.

2 2.1. Defendant admits Exhibit A speaks for itself. Defendant is without
3 sufficient knowledge to admit or deny the balance of paragraph 2.1, and therefore denies
4 it.

5 2.2. Defendant admits Water Certificates 1726 and 5605 speak for themselves.
6 Defendant is without sufficient knowledge to admit or deny the balance of paragraph
7 2.2, and therefore denies it.

8 2.3. Defendant admits Water Certificate 1726 speaks for itself. Defendant is
9 without sufficient knowledge to admit or deny the balance of paragraph 2.3, and
10 therefore denies it.

11 2.4. Defendant admits Water Certificate 5604 and the November 20, 1952
12 Report of Examination speak for themselves. Defendant is without sufficient knowledge
13 to admit or deny the balance of paragraph 2.4, and therefore denies it.

14 2.5. Defendant is without sufficient knowledge to admit or deny paragraph 2.5,
15 and therefore denies it.

16 2.6. Defendant admits it submitted applications to the Department of Ecology,
17 which applications speak for themselves. Defendant is without sufficient knowledge to
18 admit or deny the balance of paragraph 2.6, and therefore denies it.

19 2.7. Defendant admits the applications to the Department of Ecology speak for
20 themselves. Defendant is without sufficient knowledge to admit or deny the balance of
21 paragraph 2.7, and therefore denies it.

1 2.8. Defendant is without sufficient knowledge to admit or deny paragraph 2.5,
2 and therefore denies it.

3 2.9. Defendant admits it built infrastructure for its water system, and that
4 Exhibit B speaks for itself. Defendant is without sufficient knowledge to admit or deny
5 the balance of paragraph 2.1, and therefore denies it.

6 2.10. Defendant admits discoloration problems with the Well 6 water create
7 problems with its use for potable water. Defendant is without sufficient knowledge to
8 admit or deny the balance of paragraph 2.10, and therefore denies it.

9 2.11. Defendant admits Plaintiffs communicated with Mark Scheibmeir, Steve
10 Ashley and the Department of Ecology and instituted a lawsuit against the City of
11 Napavine and Ecology, which is now before the Court of Appeals. Defendant denies the
12 balance of paragraph 2.11.

13 2.12. Defendant admits Exhibit C speaks for itself and denies the balance of
14 paragraph 2.12.

15 3.1 Defendant admits the Washington Constitution and Washington case law
16 speak for themselves and denies the balance of paragraph 3.1.

17 3.2. Denied.

18 3.3. Denied.

19 3.4. Denied.

1 3.5. Defendant admits Washington case law speaks for itself. Defendant is
2 without sufficient knowledge to admit or deny the balance of paragraph 3.5, and
3 therefore denies it.

4 3.6. Denied.

5 3.7. Defendant is without sufficient knowledge to admit or deny paragraph 3.7,
6 and therefore denies it.

7 3.8. Denied.

8 3.9. Denied.

9 3.10. Denied.

10 3.11. Denied.

11 3.12. Denied.

12 Defendant denies the balance of Plaintiffs' complaint.

13
14 **Affirmative Defenses**

15 1. Plaintiffs' damages, if any, were proximately caused by plaintiffs' own
16 actions, omissions and negligence and damages should be apportioned accordingly
17 pursuant to law.

18 2. Plaintiffs have failed to mitigate their damages, if any.

19 3. Plaintiffs' complaint fails to state a claim for which relief can be granted.

20 4. Res judicata.

21 5. Collateral estoppel.

22 6. Waiver.

- 1 7. Statute of limitations and/or laches.
- 2 8. Estoppel.
- 3 9. Failure to satisfy conditions precedent.
- 4 10. Assumption of the risk.
- 5 11. Failure to name necessary parties, including, without limitation, the other
- 6 successor owners to the farm identified in paragraph 2.2 of Plaintiffs' Complaint.
- 7 12. Setoff and payment made.
- 8 13. Failure to exhaust administrative remedies.
- 9 14. Circuity of action.
- 10 15. Immunity of Defendant.
- 11 16. Defendant acted in its proprietary capacity.
- 12 17. Defendant reserves the right to amend its answer to assert additional
- 13 defenses.

Request for Relief

16 Having fully answered Plaintiffs' complaint and asserted affirmative defenses,
17 Defendant requests that:

- 18 1. Plaintiffs' complaint be dismissed with prejudice;
- 19 2. Defendant be awarded its taxable costs and statutory attorneys' fees herein;
- 20 3. Defendant be awarded its reasonable attorneys' fees and costs; and
- 21 4. For such other and further relief as the Court deems equitable and proper.

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DATED this 1st day of June, 2018.

By: /s/Michael B. Tierney
Michael B. Tierney, WSBA #13662
Paul Correa, WSBA #48312
Attorneys for Defendant

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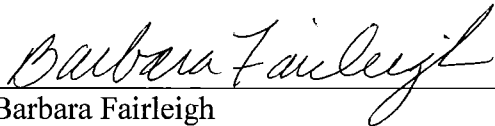
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3 **DECLARATION OF SERVICE**

4 I declare under penalty of perjury under the laws of the State of Washington, I caused the
5 original of the foregoing document to be electronically filed with the Court, which will
6 electronically serve the following counsel of record:

7 Attorneys for Plaintiffs:

8 Ben D. Cushman
9 Deschutes Law Group, PLLC
400 Union Ave, Suite 200
Olympia, WA 98501
Ben@deschuteslawgroup.com

10 DATED this 1st day of June, 2018.
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12
13 
14 Barbara Fairleigh